

**BEFORE THE
PHYSICAL THERAPY BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	Case #: 1D 2002 63156
Against:)	
)	OAH No.: L2003090319
THERESA VAN VRANKEN.)	
)	
)	
)	

The foregoing Proposed Decision, in case number 1D 2002 63156, is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 9th day of March, 2004.

It is so ordered this February 6, 2004 .

Original Signed By:
Don A. Chu, P.T., President
Physical Therapy Board
of California

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THERESA VAN VRANKEN
2049 Lake Shore Avenue
Los Angeles, CA 90039,

Physical Therapist License
Number PT 23446,

Respondent.

Case No. 1D 2002 63156

OAH No. L2003090319

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on December 22, 2003.

Deputy Attorney General Rajpal S. Dhillon represented complainant.

Respondent, Theresa Van Vranken, personally appeared and represented herself.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Accusation was filed by Steven K. Hartzell ("complainant") while acting in his official capacity as Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs ("the board").

2. On August 31, 1998, the board issued Physical Therapist License Number PT 23446 to Theresa Van Vranken ("respondent"). At all relevant times, that license was, and currently is, in full force and effect.

3. On December 27, 2001, in the Los Angeles County Municipal Court, Beverly Hills Judicial District, in Case number 1BH01686, respondent, Theresa Van

Vranken, was convicted after entry of her *nolo contendere* plea, of one count of violating California Vehicle Code section 23152(b) (Driving a Motor Vehicle with .08% or more Alcohol in her system), and one count of violating California Vehicle Code section 2002, subdivision (a) (hit and run where property damage has occurred) misdemeanor crimes. As a result of her convictions respondent was placed on three years summary probation on certain terms and conditions, including completion of a drunk driving program.

The facts and circumstances underlying respondent's convictions are as follows: On October 27, 2001, at about 2:50 a.m., respondent was driving eastbound on Santa Monica Boulevard in the city of West Hollywood. Respondent had just left the scene of a traffic accident in which she had rear-ended a Chevy Cavalier without stopping to exchange information. Los Angeles County Sheriff's deputies observed respondent's vehicle come to an abrupt stop. The deputies made a U-turn and began following respondent. Respondent's vehicle veered left and struck the median. Respondent's vehicle continued traveling in the median for approximately 130 feet damaging plants and sprinklers before coming to a stop. As the deputies approached respondent's vehicle respondent attempted to drive away without success. Respondent's vehicle became engulfed in smoke and the deputies feared that the vehicle would catch fire. The deputies pulled respondent out of the vehicle and as they were doing so they noticed the strong smell of alcohol on respondent's breath. Respondent was unable to perform the field sobriety tests. Subsequent testing revealed that respondent's blood/alcohol level was between .19 and .22.

The nature of respondent's convictions and the facts and circumstances underlying respondent's convictions establish that the convictions were for crimes substantially related to the functions and duties of a licentiate.

4. Respondent is on probation until December 2004.

5. In 1986 or 1987, respondent was convicted in Marin County, California of one count of driving under the influence of alcohol and one count of possession of a controlled substance, crimes substantially related to the functions and duties of a licentiate.

Respondent's driving license was restricted based on the drunk driving conviction and respondent participated in a drug diversion program as a result of her conviction for possession of a controlled substance.

6. After respondent's 2001 convictions for driving under the influence and hit and run respondent enrolled in "Right On Program, Inc.", a DUI program. Respondent also "sought assistance from my psychologist and psychiatrist." (Exhibit 7.) Respondent has been under the care of her psychologist and psychiatrist for 1 ½ years and has been diagnosed with bi-polar disorder, depression, and impulsive

behavior. According to respondent, her psychological problems led her to abuse alcohol after 14 years of sobriety. (Exhibit 7.)

Although respondent presented a letter from her current psychologist, Dr. Annette Swain (Exhibit A), respondent presented no live testimony concerning her current mental status. Dr. Swain reports, in her letter, that respondent has “developed greater understanding and control over her moods” and has “taken several steps toward achieving better physical and mental health.” Dr. Swain opines that respondent “continues to be able to perform at her job at a superior level”, however, without being able to cross-examine Dr. Swain concerning the statements in her letter it is not possible to assess with any degree of confidence whether respondent can safely practice her profession without limitations.

7. The actual and reasonable costs of the investigation and prosecution of the instant case against respondent totals \$3,920.00.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for discipline of respondent’s license pursuant to Business and Professions Code (“Code”) section 2660, subdivision (d) because, as set forth in Finding 3, respondent was convicted of crimes substantially related to the functions and duties of a licentiate.

2. Cause exists for discipline of respondent’s license pursuant to Code section 2660, subdivision (d) because, as set forth in Finding 5, respondent was convicted of crimes substantially related to the functions and duties of a licentiate.

3. Cause exists for discipline of respondent’s license pursuant to Code section 2660, subdivision (d) because, as established in Findings 3 and 5, respondent used alcoholic beverages in such a manner as to be dangerous or injurious to herself and other people; and, she has sustained more than one misdemeanor conviction involving consumption of alcohol.

4. Cause exists for discipline of respondent’s license pursuant to Code section 820 because, as established in Finding 6, respondent has been diagnosed with mental illnesses that may impair her ability to practice her profession safely.

5. The actual and reasonable costs of the investigation and prosecution of the instant case against respondent, recoverable by the board pursuant to Code section 2661.5, subdivision (a), totals \$3,920.00.

6. As set forth in Finding 6, it is not possible from the evidence presented by respondent to determine whether respondent can safely practice her profession;

consequently, as a precautionary measure, respondent shall be required to undergo psychiatric evaluation as a condition precedent to her ability to practice under a grant of probation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent's license shall be revoked; however, the revocation is stayed and respondent shall be placed on probation for three (3) years under the following terms and conditions:

1. Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric/psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed psychiatrist/psychologist, who shall furnish an evaluation report to the Board or its designee. Respondent shall pay the cost of the psychiatric/psychological evaluation.

If respondent is required by the Board or its designee to undergo psychiatric/psychological treatment, respondent shall within 30 days of the requirement submit to the Board for its prior approval the name and qualifications of a psychiatrist/psychologist of respondent's choice. Respondent shall undergo and continue psychiatric/psychological treatment until further notice from the Board or its designee. Respondent shall have the treating psychiatrist/psychologist submit quarterly status reports to the Board or its designee indicating whether the respondent is capable of practicing physical therapy safely.

Respondent shall not engage in the practice of physical therapy until notified by the Board or its designee of its determination that respondent is mentally fit to practice safely.

2. Respondent shall reimburse the Board the actual and reasonable investigative and prosecutorial costs in the amount of \$3,920.00 within 30 days from the effective date of this decision unless the Board agrees in writing to payment by an installment plan. Failure to make the ordered reimbursement, or any agreed upon payment, constitutes a violation of probation.

3. Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice of physical therapy in California.

4. Respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order constitutes a violation of probation.
5. Any violation of the terms and conditions of respondent's criminal probation, or respondent's failure to comply with any valid restitution order constitutes a violation of probation in the instant matter.
6. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.
7. Respondent shall comply with the Board's probation monitoring program.
8. Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals and with reasonable notice.
9. Respondent shall notify all present or future employers of the reason for and the terms and conditions of probation by providing a copy of the accusation and the decision and order to the employer. Respondent shall obtain written confirmation from the employer that the documents were received. If respondent changes, or obtains additional employment, respondent shall provide the above notification to the employer and submit written employer confirmation to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.
10. Respondent shall notify the Board, in writing, of any and all changes of name or address within ten days.
11. Respondent may only practice or perform physical therapy in a supervised structured environment. Respondent shall not work for a temporary services agency or registry.
12. Respondent may not use aliases and shall be prohibited from using any name, which is not his/her legally recognized name or based upon a legal change of name.
13. If respondent works less than 192 hours in a period of three months, those months shall not be counted toward satisfaction of the probationary period. Respondent shall notify the Board if he/she works less than 192 hours in a three-month period.
14. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled

Substances Act, dangerous drugs as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by a practitioner licensed to prescribe such medications.

15. Respondent shall abstain completely from the use of alcoholic beverages.

16. Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.

17. Within 15 days from the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that participation in the diversion program is no longer necessary. Failure to comply with requirements of the Diversion Program, terminating the program without permission or being expelled for cause shall constitute a violation of probation by respondent.

18. All costs incurred by the Board for probation monitoring during the entire period of probation shall be reimbursed by respondent. Respondent will be billed at least quarterly. Failure to make the ordered reimbursement within 60 days of the billing shall constitute a violation of probation.

19. Following the effective date of this probation, if respondent ceases practicing physical therapy due to retirement, health or other reasons respondent may request to surrender his/her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, the terms and conditions of probation shall be tolled until such time as the license is no longer renewable, respondent makes application for the renewal of the tendered license, or respondent applies for a new license.

20. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

21. Upon successful completion of probation, respondent's license or approval shall be fully restored.

Dated: January 20, 2004.

Original Signed By: _____

ROY W. HEWITT

Administrative Law Judge

Office of Administrative Hearings